



25 Sigourney Street  
Hartford CT 06106-5032

STATE OF CONNECTICUT  
DEPARTMENT OF REVENUE SERVICES

IP 2002(16)

INFORMATIONAL PUBLICATION

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## Successor Liability for Sales and Use Taxes and Admissions and Dues Tax

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**Purpose:** This Informational Publication explains successor liability and describes the requirements and procedures for purchasers of businesses to request a tax clearance certificate for sales and use taxes and admissions and dues tax.

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**Effective Date:** Upon issuance.

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**Statutory Authority:** Conn. Gen. Stat. §12-418(1), Conn. Gen. Stat. §12-422, Conn. Gen. Stat. §12-424, Conn. Gen. Stat. §12-15(b)(6), Conn. Gen. Stat. §12-546 and Conn. Agencies Regs. §12-2-9.

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**What is Successor Liability?** Successor liability is the obligation of the purchaser (successor) to withhold a sufficient amount of the purchase price to cover any sales and use tax liability or admissions and dues tax liability of the seller until the seller (predecessor) produces a receipt from the Commissioner of Revenue Services showing that any tax liabilities have been paid or a certificate stating that no amount of tax is due. Under successor liability, the purchaser of a business is liable for the taxes of the previous owner to the extent of the purchase price of the business unless the purchaser obtains a tax clearance certificate from DRS.

Successor liability applies where:

- A person **voluntarily** sells a business; or
- Transfers all or substantially all the assets of a business to one or more purchasers.

*Voluntarily* means a person sells the business on its own initiative (even if it is motivated by financial, health, or personal concerns) as opposed to a person selling the business because of bankruptcy, court ordered sale, or the like.

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### What Does It Mean to Quit the Business?

Occasionally an owner of a business will walk away from the business or receive little cash for it. When an owner quits the business and transfers it for little or no monetary consideration, this also triggers successor liability. If the buyer takes on only the debt of the seller in exchange for the assets of the business, the amount of the debt assumed is the purchase price of the business.

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### How is the Purchase Price of a Business Computed?

The purchase price of a business is measured by the amount of cash paid, if any, plus the amount of liabilities assumed, if any. The purchase price is the total amount of payment valued in money, whether paid in money or otherwise, transferred directly or indirectly to the seller by the purchaser. The purchase price includes the fair market value of consideration other than money paid directly or indirectly to the seller. For example, consideration paid indirectly to the seller includes the amount of any liability of the seller assumed by the purchaser, any obligations incurred by the purchaser for acquiring the seller's business assets, and the amount of any outstanding debt that the seller owes the purchaser, prior to the sale, if the debt is cancelled and offset against the purchase price.

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### Can the Purchaser of a Business Avoid Successor Liability?

To avoid successor liability, the purchaser must obtain a tax clearance certificate for sales and use taxes or admissions and dues tax, or both, before it purchases an existing business. The purchaser of the business should request a tax clearance certificate between the time the purchaser commits to buy the business and the closing. The Department of Revenue Services (DRS) recommends that the purchaser request a tax clearance certificate at least 90 days before the closing. DRS has 60 days

from the date that all required information is received to either issue a tax clearance certificate or an escrow letter to the purchaser.

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**What is a Tax Clearance Certificate?** DRS issues a tax clearance certificate to the purchaser of a business that release the purchaser from any sales and use tax liability or admissions and dues tax liability of the seller, or both. The certificate states that no sales and use taxes or admissions and dues tax, or both, are due from the seller and relieves the purchaser of a business from any further obligation to withhold all or part of the purchase price of a business. Only the purchaser of a business or a practitioner (an attorney or accountant) who is representing the purchaser may request a tax clearance certificate. A properly completed **Form LGL-001**, *Power of Attorney*, must accompany the request from a practitioner.

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**What is an Escrow Letter?** An escrow letter is a letter that DRS sends to a purchaser of a business that has requested a tax clearance certificate if DRS determines that the business has a tax liability. The escrow letter notifies the successor of exactly how much to withhold from the purchase price of the business to cover the seller's liability. The escrow letter specifies an amount up to but not exceeding the purchase price of the business that is the maximum amount of successor liability for which the purchaser will be liable.

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**What Information Must a Purchaser Include in the Letter to Request a Tax Clearance Certificate?** The purchaser of a business must provide the following information to request a tax clearance certificate:

- The name and address of the purchaser;
- The name and address of the practitioner representing the purchaser, if applicable;
- The Connecticut Tax Registration Number assigned to the purchaser by DRS;
- The name and address of the business being sold as registered with DRS;
- The Connecticut Tax Registration Number of the business being sold;
- A letter signed in the original by the purchaser or its practitioner that clearly indicates the intent to purchase the business or stock of goods;

- A copy of the purchase agreement including all schedules, addenda, and attachments;
  - The purchase price of the business;
  - The expected closing date of the sale;
  - The physical location where the purchaser will operate the business; and
  - A properly executed **Form LGL-001**, if the purchaser wants DRS to contact its practitioner.
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**How Should a Tax Clearance Certificate Request Be Delivered to DRS?** The purchaser must make the request for a tax clearance certificate by registered or certified mail. Registered or certified mail may include any common carrier overnight mail delivery where proper delivery and mailing bills can verify the mailing and delivery date. The mailing address is:

Department of Revenue Services  
Audit Division – RCA Unit  
Request for a Clearance Certificate  
25 Sigourney St.  
Hartford CT 06106

Hand-delivered requests are not accepted. Tax clearance requests by e-mail or fax are not allowed.

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**When Does a Purchaser Receive a Tax Clearance Certificate or Escrow Letter?** DRS will issue either a tax clearance certificate indicating that the purchaser will not incur any sales and use tax or admissions and dues tax liability owed by the seller, or an escrow letter notifying the purchaser of how much of the purchase price to withhold to cover the seller's liability within 60 days after DRS receives the written request for a tax clearance and all required information. The tax clearance certificate or escrow letter is deemed to have been sent on the date shown by the U. S. Post Office cancellation stamp.

If the tax clearance request does not contain all required information, DRS will send a letter to notify the purchaser of the additional information needed. The 60 days begins to run when all required information is received by DRS. If DRS does not send the tax clearance certificate or escrow letter within 60 days of the receipt of all required information to request a tax clearance certificate, the purchaser is not liable for any unpaid sales and use taxes or admissions and dues taxes of the seller. The 60 days is not contingent on the closing date of the sale of the business.

A request for a tax clearance certificate does not automatically trigger an audit. However, DRS will advise the purchaser if an audit of the business will be conducted. If an audit is conducted, the escrow letter will contain the amount to withhold from the purchase price, based on the audit, to cover the tax liability.

A tax clearance certificate is issued when all outstanding sales and use tax and admissions and dues tax liabilities are paid, and all outstanding sales and use tax returns and admissions and dues tax returns are filed. When a tax clearance certificate is issued, the purchaser of a business is released from any further sales and use tax liability (or admissions and dues tax) of the seller.

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**What if a Purchaser Fails to Obtain a Tax Clearance Certificate or Escrow Letter?** If a purchaser fails to obtain a tax clearance certificate or escrow letter, the purchaser is liable for any sales and use tax liability (or admissions and dues tax liability) of the successor up to the purchase price of the business.

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**Does Purchasing Stock or a Controlling Interest in a Corporation, Limited Liability Company, or Partnership Trigger Successor Liability?** No. The purchase of stock in a corporation does not trigger successor liability because there is no change in the business entity. Likewise, the purchaser of all or a portion of a controlling interest in a limited partnership (LP) or limited liability company (LLC) is not a successor, for successor liability purposes, so long as the entity itself does not change or cease to exist. However, the purchaser of an LP or LLC is a successor if the entity being purchased changes to another type of business entity or ceases to exist.

If there is a change in a business entity, then successor liability may exist. For example, the change of a business from a sole proprietorship to a corporation, from a corporation to an LLC, or from a partnership to a corporation may create successor liability.

If a seller operates a business at more than one location under the same tax registration number or sub-numbers and one or more of the locations are sold, then successor liability applies for each of the locations that is sold.

**Can a Successor Protest a Successor Liability Assessment?** Once a successor liability assessment has been made, the successor may only protest:

- Whether it is a successor;
  - The amount of the purchase price of the business; and
  - Whether it requested a tax clearance certificate or properly withheld a sufficient amount from the purchase price.
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**Do Involuntary Transfers Create Successor Liability?** Foreclosures, evictions, repossessions, bankruptcies, and similar involuntary transfers do not create successor liability. To incur successor liability, the transaction must have two mutually acceptable parties and have every appearance of a voluntary act, even if compelled by business situations such as debt.

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**Can a Successor Appeal the Audit of a Seller?** Yes. If a purchaser acknowledges that it is a successor within the meaning of Conn. Gen. Stat. §12-424. The purchaser may directly protest the audit assessment of a seller. The purchaser may receive returns, return information, and audit information pertaining to the seller's business as an interested party.

The purchaser must complete **Form AU-680, Acknowledgment of Successor or Assignee Status as Used in Conn. Gen. Stat. §12-15(b)(6)**, to receive returns, return information, and audit information as an interested party.

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**Effect on Other Documents:** None affected

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**Effect of This Document:** An Informational Publication is a document issued by DRS that addresses frequently asked questions about a current position, policy, or practice, usually in a less technical question and answer format.

**For Further Information:** Please call DRS during business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday:

- **1-800-382-9463** (toll-free within Connecticut), or
- **860-297-5962** (from anywhere)

**TTY, TDD, and Text Telephone users only** may transmit inquiries 24 hours a day by calling 860-297-4911.

**Forms and Publications:** Forms and publications are available all day, seven days a week:

- **Internet:** Preview and download forms and publications from the DRS Web site: **[www.drs.state.ct.us](http://www.drs.state.ct.us)**
- **DRS TAX-FAX:** Call **860-297-5698** from the handset attached to your fax machine and select from the menu.
- **Telephone:** Call **860-297-4753** (from anywhere), or **1-800-382-9463** (toll-free within Connecticut) and select **Option 2** from a touch-tone phone.

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